IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 448 OF 2004

Shrigonda Sahakari Sakhar Karkhana Ltd. .. Appellant

V/s

Deputy Commissioner of Income Tax, Special Range-2, Aurangabad & Ors. .. Respondents

Mr.B.V. Mahadik for the Appellant.

Mr.A.N. Kotangale for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 22ND AUGUST 2006

P.C. :

1. Heard Mr.Mahadik in support of this Appeal. Mr.Kotangale appears for the Respondents.

2. The Appellant herein is a cooperative sugar factory registered under the Cooperative Societies Act, 1960. The Appellant is aggrieved by the order passed by the Income Tax Appellate Tribunal, Pune dated 24th March 2003. Three questions of law are sought to be raised in this Appeal. The second question is regarding the vehicle hire expenses and the third one is with respect to the deletion of disallowance of Rs.1,62,488/- under section 40A(3) of the Income Tax Act. Mr.Mahadik states

that these two questions are not being pressed. The only question which is being pressed is with respect to the addition made by the Assessing Officer on account of expansion deposit collected by the karkhana from the sugarcane purchase price payable to the cane-growers. The Tribunal has relied upon the decision of this Court in the case of **C.I.T. v. Chhatrapati Sahakari Sakhar Karkhana Ltd. - 245 I.T.R. 498** to justify these additions. Mr.Mahadik has pointed out that this judgment has been subsequently overruled by the Apex Court in **Siddheshwar Sahakari Sakhar Karkhana Ltd. v. C.I.T., Kolhapur - 270 I.T.R. 1**. The Apex Court has held that these non-refundable deposits cannot be added to the income of the karkhana. This being the position, the appeal will have to be allowed to the extent these additions are made. The order of the Tribunal is accordingly set aside and the matter will be remanded to the Assessing Officer to decide the tax liability of the Appellant in accordance with the above referred judgment of the Apex Court.

3. Appeal is allowed in the above terms.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)